

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

May 26, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu

Absent: None

Staff: Bakker, Carrington, Fujimoto, Heyden, Lindsay, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
May 12, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of May 12, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Planning Manager, announced that the City Attorney's presentation of religious land use issues (RLUIPA) would be continued to the June 9, 2004 meeting.

Chair Nitafan announced that the annual Filipino multicultural festival and event show would be held on June 5, 2004 from 7 p.m. to midnight.

Mr. Lindsay also announced that the Commissioners appreciation dinner will be held at the City Hall Civic Center Plaza on July 23, 2004 at 6:30 p.m. and will include a barbeque buffet dinner with live entertainment.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Commissioner Giordano asked staff what the outcome was in regards to the design of the entry gate at 1000 Country Club Drive relative to the other two entrances.

Troy Fujimoto, Associate Planner, noted that the other two entrances are similar, however there is another entrance that is adjacent to the existing property that has a new gate with a different design.

Chair Nitafan opened the public hearing on Consent Item Nos. 3 and 4.

There were no speakers from the audience.

**Close the public hearing on
Consent Item Nos. 3 and 4**

Motion to close the public hearing on Consent Item Nos. 3 and 4.

M/S: Galang/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3 and 4.

***3 USE PERMIT AMENDMENT NO. UA2004-6:** A request to amend an existing use permit to allow outdoor cooking (barbecue) and add a deli service to an existing market at 74 Dempsey Road (APN: 088-04-001), zoned Neighborhood Commercial with an "S" overlay (C1-S). Applicant: Al-Khafaji Hassan. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2321) *(Recommendation: Approval with Conditions)*

***4 PLANNED UNIT DEVELOPMENT (PD2002-2) AND TIME EXTENSION (TE2004-2):** A request for a one-time 18-month time extension for Planned Unit Development No. PD2002-2 for a hillside single-family home at 1000 Country Club Drive. (APN: 029-03-014), zoned Single Family Hillside (R1-H). Applicant: LaCroix Construction Co. Inc. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Recommend Approval to City Council with Conditions)*

M/S: Mohsin/Lalwani

AYES: 7

NOES: 0

**VIII.
PUBLIC HEARING**

1. "S" Zone

**Approval Amendment No.
SA2004-7 and Use**

Permit Amendment No.

UA2004-2: A request to amend a previously approved mixed-use development at 230 North Main Street.

Applicant: Apton Properties, LLC.

Mr. Lindsay noted that the agenda title should read "S" Zone approval Amendment No. SA2004-7 and Use permit Amendment No. UA2004-2. He also noted that right before the start of the meeting, staff received another letter from the applicant and they are suggesting rewording of Condition No. 34(a) which is referenced in their previous letter. He noted that it is a lengthy change, and staff would need more time than is allowed in the meeting to consider the change, so staff will continue to work with the applicant on the item through the next City Council meeting.

Staci Pereira, Assistant Planner, presented "S" Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2, a request to amend a previously approved mixed-use development to reduce the number of residential units from 102 to 96, reduce the retail floor area, modify their Density Bonus approval to exceed the maximum density by 7 units and a request not to provide 27 required parking spaces. The project site is located at 230 North Main Street within the MXD-TOD zoning district and Ms. Pereira recommended approval with conditions to City Council. In addition, staff recommends revisions to Condition No. 34(a), and deletion of Condition Nos. 46 (Utilities) and 51 (Vibration Study) which reads as follows:

34) PUBLIC IMPROVEMENTS. Prior to any building permit issuance, the developer shall:

- a) Make a payment to the City in Lieu of designing and constructing the required improvements along its frontage on Weller Lane (construct 30 foot maximum width street) and intersection improvements at N. Main and Weller, including but not limited to curb and gutter, pavement, decorative lighted smart crosswalk, sidewalk, relocating underground utilities (water, sewer, and storm drain line) and providing utility laterals, Fire hydrant and fire service connections to serve this project, decorative curb bulb-out at intersection with flush curb & protective bollards, street tree planting, signage and striping, signal modification, street lights, pedestrian lighting and tree well grates, except undergrounding/relocating of the existing overhead utilities. The developer's obligation for payment in Lieu of designing and constructing the required improvements is set at a maximum of \$652,856. The City will consider adjusting this amount based on the average of three cost estimates from bonded licensed contractors from the same scope of work provided by applicant that meets the approval of the City Engineer. The developer is also required to coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E.

46) UTILITIES. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

51) VIBRATION STUDY. Prior to building permit issuance, the applicant shall submit to the Planning Division a site specific vibration analysis addressing the vibration impacts from the adjacent Union Pacific Railroad tracks from a qualified acoustical consultant. If at the time of final design there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating.

Commissioner Sandhu asked if the application for amending the project was initiated by the City or the applicant. Ms. Pereira replied that the revisions were initiated by the applicant and were in part due to the progress of the library project.

Commissioner Giordano asked what were the reasons behind the reduction of 27 parking spaces. Ms. Pereira noted that the previous approved project had two levels of parking that exceeded the building height and number of stories in the district. The project was resubmitted with modifications that included only one level of parking, a reduction of height, reduction in stories, and reduction in units as well as the retail floor area, so the total number of parking spaces has been decreased. 25 spaces of guest parking and 2 retail spaces is requested to be reduced.

Commissioner Giordano is concerned about the reduction in parking and asked if the City has experienced something like this before in Midtown. Mr. Lindsay commented that this is something new and staff is hoping to create the environment in Midtown for more parking opportunities. He noted that the Council approved the hiring of a consultant to help the City look at creating more parking districts in Midtown so that a developer is not required to provide all of their parking on the property which would maximize their value in property and get people out of their cars to walk on the streets looking at storefronts.

Commissioner Garcia asked what is status of the union pacific railroad tracks. Mr. Lindsay replied that the rail tracks are currently not in use and once the BART alignment is complete the operations will be moved to those tracks. The tracks are not expected to be in use until after Apton Plaza gets built. He also noted that Caltrans has provided a worse case scenario vibration analysis, which has been applied to the project, and even though existing vibration conditions cannot be measured, staff felt assured that if train traffic were to resume on the tracks, everything would be fine.

Commissioner Garcia asked what is the distance from the future BART to Apton plaza and Mr. Lindsay replied that the BART tracks are several hundred feet away.

Commissioner Garcia asked if the noise from the rail yard would impact the future residents of Apton Plaza. Ms. Pereira explained that a noise analysis done by a consultant concluded that the internal noise levels could be achieved so long as during construction of the project proper doors, walls and windows are installed with specific ratings. Also, it was concluded that exterior noise levels would not be exceeded in the courtyard due to the three story residential height of the building.

Commissioner Galang asked where would the garage entrance be relocated. Ms. Pereira responded that the garage entrance would be relocated to N. Main.

Commissioner Galang asked why is the garbage enclosure being relocated. Ms. Pereira responded that the Weller driveway is intended to be a driveway to the new garage in the future. It would also be difficult for BFI to access the project's garbage enclosure.

Mr. Lindsay added that the turnaround space near the garbage enclosure made it no longer feasible for the fire department and BFI to access the area.

Commissioner Galang inquired about the proposed towers of the building and Ms. Pereira showed a drawing exhibit and explained that the towers anchor three of the four corners and vary in height.

Commissioner Galang inquired about the proposed clock. Ms. Pereira noted that the clock will be visible by the public and the details of the clock will have to be approved by staff at the time of permit issuance.

Vice Chair Lalwani felt comfortable about on-street parking noting that once the VTA bus station on N. Main goes away there will be plenty of parking spaces. She asked if the three-story parking garage near the library will be for pedestrians and residents of the development and Ms. Pereira responded, "Yes." She also explained that in conjunction with the library construction, there would be a public garage facility, which will be available to all members of the public including guests and patrons of the proposed retail development.

Vice Chair Lalwani asked for clarification on the memos received by the applicant and the City and asked if condition no. 34(a) could be worked out. Ms. Pereira responded that staff hasn't had a chance to review the revised letter submitted by the applicant but should have an answer before the Council meeting in June.

Mr. Lindsay added that staff is asking that the Commission make a recommendation to the Council including to include the revisions to special condition no. 34(a) proposed by staff. If there are any additional changes, staff will make the changes prior to the Council meeting.

Commissioner Mohsin asked staff what "below grade" meant in regards to the trash enclosure. Ms. Pereira responded that it means the enclosure will be built like an inverted driveway, about a 2% slope.

Commissioner Mohsin asked if the slope will be comfortable for residents and Ms. Pereira responded that the garbage enclosure will be aesthetically pleasing and will not produce any odors or noise.

Commissioner Mohsin asked about any vibration noise in regards to the nearby railroad tracks. Ms. Pereira responded that staff is recommending that condition no. 51 be removed because the applicant has submitted a vibration study by a consultant that uses a standard that looks at the worst case scenario so based on that, staff would not anticipate that any vibration would be worse than that.

Chair Nitafan acknowledged staff for completing a vibration study and noted that it is up to the Commission to delete condition no. 51.

Chair Nitafan introduced the applicant.

Jim McClelland, Maple Dell + McClelland Architects in Walnut Creek, noted that that the applicant is very supportive of the staff report except for condition no. 34(a). The applicant felt that the estimate compiled by the City is very preliminary and would like to study it in a lot detail and provide estimates by other contractors before agreeing to a dollar number. He also noted that staff said that they could present the cost estimates to Council. In that regard, the applicant accepts the revised wording of condition no. 34(a) and will present the revised language to Council.

Commissioner Giordano asked Mr. McClelland if he accepts staff's version of condition no. 34(a) and Mr. McClelland responded, "Yes", as long as the applicant can present some cost estimates at the Council meeting.

Commissioner Giordano asked if the applicant is to give cost estimates lower than what the City has provided, will there be a problem with the City accepting the bid. Mr. Lindsay explained that the estimates and any revised amounts need the approval of the City Engineer. The bids will have to be structured as if the City is doing the work because this will be an in-lieu fee that the developer pays the City with the intention the City uses the money to put towards those improvements in place to stage that with the construction of the library. If the bid the developers receive has been done appropriately than the City Engineer will adjust the fee.

Chair Nitafan opened the public hearing.

Don Peoples, 529 S. Main Street, President of Downtown Association, commented that each area in Midtown has unique challenges. For example, the southern portion of Main Street has a large lot and the City owns the biggest lot on the north end. He felt that it is important that staff does their best to get the project underway and felt that the project will greatly enhance the library project and the look of the area.

**Close Public Hearing
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve "S" Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2 with revised Condition no. 34(a) and deletion of condition no. 46 and condition no. 51.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Chair Nitafan felt that the changes to Apton Plaza are very positive and will accommodate the new library.

Commissioner Mohsin is very excited about the project and is looking forward to the completion of the project.

2. SIX-MONTH REVIEW (PR2004-2) OF USE PERMIT AMENDMENT NO. UA2003-15: A six-month review of Use Permit Amendment No. UA2003-15 for the Manila Natori restaurant at 579 South Main Street. *Applicant: Bella Juniega*

Troy Fujimoto, Associate Planner, presented a Six-Month Review (PR2004-2) of Use Permit Amendment No. UA2003-15 for live entertainment, to ensure that a garbage enclosure is built and the project is in compliance with all conditions of approval for the Manila Natori restaurant at 579 South Main Street and recommended note receipt and file.

Chair Nitafan invited the applicant to speak.

Don Peoples, 529 S. Main Street, consultant to Manila Natori, stated that the improvements to the outside of the restaurant is fantastic and noted that the applicant has done a lot of work to clean up the outside. He noted that the design of the trash enclosure has been submitted to the City and is expecting to get City approval with the plans. As far as the occupancy permit, a couple of conditions need to be cleared up.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing
Agenda Item No. 2**

Motion to close the public hearing.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

Chair Nitafan asked if the new tenants were aware of the conditions that the previous owner did not meet. He also asked how long has the new tenant been operating at Manila Natori. Mr. Fujimoto noted that when the previous temporary use permit expired in July 2003, the new owners had taken over the business and it was their request to not have the improvements done prior to having live entertainment. Staff accommodated their request and gave them six months so that they can still have their live entertainment.

Bella Juniega, Applicant of 579 S. Main Street, stated that they have been given a hard time because of the previous owners and said that they would comply with the City the best they could. She knows that they are late on the trash enclosure because they had just started the business, so she asked staff to give them some time which they did, at the same time we did it as fast as we could. She noted that the restaurant looks much better than before and felt that staff should consider giving them more time to complete the enclosure.

Chair Nitafan asked the applicant if she agrees to one month to complete the trash enclosure. Ms. Juniega responded that she doesn't know how long it will take to complete the enclosure.

Chair Nitafan asked staff if one month is reasonable. Mr. Fujimoto replied that it is staff's understanding that the plans are almost complete in regards to the trash enclosure. Once the permit is procured it should take two weeks to complete construction so four weeks should be adequate time.

Mr. Lindsay added that if improvements are not completed staff will be agendaizing the item as a public hearing and the applicant will have an additional opportunity for public testimony.

Chair Nitafan asked the City attorney for his opinion.

John Baaker, City Attorney, noted that the use permit gives the tenants the right to provide live entertainment and the use permits run with the land, so the new tenants have to step into the authority that the previous tenants had, they become subjects to the conditions of approval. He doesn't think the fact that a new tenant arrived makes any difference.

Chair Nitafan noted that the Commission requires no action because the recommended action is note receipt and file.

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:04 p.m. to the next regular meeting of June 9, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary